



IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-598

LOUISVILLE & NASHVILLE RAILROAD COMPANY and
STEVE HAVARD,
Petitioner.

versus

RHEETA HASTY, A Minor, By and Through Her Mother
and Next Friend, MRS. FAYE HASTY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

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PANY and STEVE HAVARD,
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RHEETA HASTY, A Minor, By and Through Her
Mother and Next Friend, MRS. FAYE HASTY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

Petitioners, Louisville & Nashville Railroad Com-
pany and Steve Havard, hereby petition the Court for
the issuance of a writ of certiorari to the Supreme
Court of Mississippi to review its judgment entered
July 12, 1978, affirming a judgment rendered February
17, 1976, by the Chancery Court of Jackson County at
Pascagoula, Mississippi.

OPINIONS BELOW

The opinion and judgment of the Supreme Court of
Mississippi, entered July 12, 1978, review of which is

sought, is reproduced in the Appendix at pages 1a-6a. The petition of the Petitioners for rehearing or, in the alternative, supplemental opinion is reproduced at pages 7a-9a. Notice of denial of same is reproduced at pages 9a-10a. The orders of the Chancellor on jurisdictional and constitutional objections raised by Petitioners are reproduced in the Appendix at pages 10a-12a. The opinion of the Chancellor on the merits of the case is not reproduced, for the reason that the Chancellor, having previously ruled upon the constitutional objections, dealt only with the facts of the case in the opinion. The decree of judgment in the amount of \$125,000.00, plus interest and costs, is reproduced at pages 12a-13a, although the Chancellor, as in the opinion, did not mention constitutional objections. Motion for new trial filed by Petitioners in the Chancery Court is reproduced at pages 13a-16a. Order of the Chancellor overruling same is reproduced at page 16a.

The attachment in chancery statutes which are in question here are reproduced in the Appendix at pages 17a-19a.

JURISDICTION

The judgment of the Mississippi Supreme Court was entered July 12, 1978. Timely petition for rehearing was filed and was denied by the Court on July 26, 1978.

Jurisdiction to review the judgment of the Supreme Court of Mississippi by certiorari is conferred on this Court by 28 USCA §1257(3).

QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

I. Whether the Mississippi attachment in Chancery statutes, Section 11-31-1, *et seq.*, Mississippi Code, 1972, are violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States, in that under said statutes:

- (1) No court order is required prior to issuance of a writ of attachment of property;
- (2) Defendant's property is attached by issuance of process at the sole instance and discretion of plaintiff and plaintiff's attorney;
- (3) No bond is required prior to attachment of defendant's property;
- (4) No showing of entitlement, by affidavit or evidence, is required prior to issuance of the writ of attachment;
- (5) No review by any judicial officer or clerk is provided, either prior to or after the attachment of defendant's property;
- (6) Defendant can dissolve the attachment only by posting satisfactory bond;

- (7) No procedure is afforded for defendant to challenge validity of the attachment;
- (8) Not even a rudimentary ex parte hearing is required;
- (9) Defendant must prevail on the merits to obtain relief from the attachment;
- (10) Defendant whose property is attached must enter general or personal appearance and defend on the merits, or suffer default and judgment against attached property.

II. Whether the Mississippi Attachment in Chancery Statutes, Section 11-31-1, et seq., Mississippi Code, 1972, as applied to the Petitioners, are violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, in that the Petitioner, a non-resident corporation which has fully qualified to do business under the corporate laws of Mississippi, with duly appointed resident agent for personal service of process, and, therefore, available for *in personam* jurisdiction, is taken before a chancellor alone, without jury, by the legal device of an attachment of property to adjudicate an unliquidated claim for damages in tort, while all resident corporations, all resident persons, non-resident motorists and other non-residents without property in the state, can be sued only in a jury court in such cases.

III. Whether it is constitutional under the Due Process Clause of the Fourteenth Amendment to require a common-law action for unliquidated damages for a claim arising in tort to be tried in Chancery, a court of equity, without a proper jury, and with no opportunity for a proper jury under the laws of Mississippi.

STATUTES INVOLVED

This case was commenced against Petitioners by way of non-resident attachment in Chancery Court, Section 11-31-1, et seq., Mississippi Code, 1972, said statutes being set forth in the Appendix at pages 17a-19a, and being also set forth in full, along with complete recitation of related attachment at law statutes, at footnotes 5-8 and 10-17 printed in the opinion of *Mississippi Chemical Corporation v. Chemical Construction Corporation*, 444 F.Supp. 925 (S.D. Miss. 1977)

Also involved are the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, reproduced at pages 19a-20a.

STATEMENT OF THE CASE

I

Statement Of Facts

Petitioner, Louisville & Nashville Railroad Company, is a Kentucky corporation, duly qualified under the corporate laws of Mississippi to do business in the state, with an appointed resident agent for personal

service of process upon the corporation in Mississippi, as is required under the corporation laws. It also owns tracks, rights-of-way, buildings, equipment, funds and other property in the state.

Petitioner Steve Havard is a resident of the State of Alabama, employed by the railroad as an engineer.

W. J. McRaney is not a Petitioner, nor was he a defendant. He is merely the station agent for the railroad at Pascagoula, Mississippi, who was named and served as the "possessor" of the list of railroad property attached.

As a result of a railroad crossing accident which occurred in Gulfport, Harrison County, Mississippi, Respondent filed a personal injury suit for damages in Pascagoula, in Jackson County, a neighboring county. Suit was filed in the form of a non-resident attachment of Petitioner Louisville & Nashville Railroad Company's property in Chancery Court, rather than in the conventional manner of filing a common-law suit in a court of law and serving process upon the railroad's appointed resident agent. In short, Respondent chose to commence the action *in rem* or *quasi in rem*, by attachment of property rather than *in personam*, by serving the railroad's appointed resident agent, who was conveniently available for personal service.

But for the assumption of jurisdiction of the railroad, the Chancellor could not have taken jurisdiction of the Petitioner Havard, but, having taken jurisdiction for one purpose, Chancery takes jurisdic-

tion for all purposes. Griffith, *Mississippi Chancery Practice* § 28 (2d ed. 1950). Havard was served as a non-resident by service upon the Secretary of State according to the long-arm statute, §13-3-63, Mississippi Code, 1972.

Mississippi has separate courts of equity (Chancery) and courts of law, and proper juries are not provided in equity courts.

No court or judicial officer was involved in any pre-attachment review. No bond was required, no affidavit or evidence was required, and attachment issued solely on Respondent's filing of suit. Petitioners had no opportunity to oppose attachment prior to issuance thereof.

Petitioners appeared specially to contest the attachment, attack the jurisdiction and raise federal and state constitutional questions. As to the attachment procedure, the statutes, the attachment in Chancery of a non-resident, domesticated corporation, and the denial of a proper jury trial in a tort claim for damages, the Petitioners complained of violations of the Fifth, Seventh and Fourteenth Amendments, denials of equal protection and due process, and violations of state laws. All motions were overruled by the Chancellor. (10a-12a)

After answering and thereby entering personal appearance, Petitioners went to trial before the Chancellor alone, without jury, and judgment *in personam* against Petitioners was awarded to Respondent in the amount of \$125,000.00 plus interest and

costs. (12a-13a) Petitioners raised the same issues on motion for new trial, which was overruled, and Petitioners, raising the same issues, appealed to the highest court in the state, where the Chancellor was affirmed. (1a-6a) Petition for rehearing (7a-9a) was denied. Petitioners now seek certiorari.

II

Proceedings Below

This personal injury suit was filed in Chancery Court of Jackson County, Mississippi, at Pascagoula, Mississippi, as a Bill of Attachment in Chancery, attaching "... the funds, personal property, real property, and all of the property, regardless of kind or character, of the non-resident Defendant, Louisville & Nashville Railroad Company ... including those articles at railroad stations in Jackson County ... being held by W. J. McCraney, station agent ..."

Petitioners made special appearances on motions attacking jurisdiction and raising various issues under the Mississippi and United States Constitutions, citing the Fifth, Seventh and Fourteenth Amendments. The Chancellor overruled all motions. (10a-12a) Before being put to trial Petitioners made the useless gesture of requesting a jury in Chancery, which was denied.¹

¹ Jury trial in Chancery Court in Mississippi, if provided by the Court, is totally useless as a jury in the traditional sense of juries in a court of law. In the text on Chancery practice in Mississippi, it is noted that juries in Chancery amount to virtually nothing.

"Because ... (1) of the delay, (2) of the additional public expense, and (3) because the verdict of a jury in chancery is purely advisory

The suit was answered by Petitioners, thereby, making personal appearance, and trial was had on the merits. The Chancellor found for Respondent and entered a decree of judgment against Petitioners in the amount of \$125,000.00, plus court costs and interest. (12a-13a) Motion for new trial was overruled. (16a) Appeal was then taken to the Supreme Court of Mississippi, which affirmed the Chancellor. (7a-9a) Petition for rehearing (7a-9a) was denied. (9a-10a) The ruling of the Supreme Court of Mississippi is final, and there is no further review, except here.

REASONS FOR GRANTING THE WRIT

The Mississippi non-resident attachment in Chancery statutes are unconstitutional on their face and as applied to Petitioners, and the Supreme Court of Mississippi, by declining to so rule, is not in accord with applicable decisions of this Court and lower Federal Courts.

In *Shaffer v. Heitner*, 433 U. S. 186 (1977), this Court held the Delaware non-resident attachment in Chancery statutes unconstitutional under the Due Process Clause as applied to circumstances similar to

and the chancellor may entirely disregard it, such a submission in an equity case is seldom allowed or desired. The granting of a jury trial in an equity case is not a matter of right, but is wholly discretionary with the chancellor; and being entirely discretionary with him he may revoke an order of reference before the case is tried, or he may disregard the finding of the jury when made. As a further consequence of this discretion, the action of the chancellor with reference to the jury and to the issues before the jury cannot be reviewed, so that upon appeal the question is whether upon the record the decree is correct irrespective of the jury and in the same manner as if no jury had been present." Griffith, *Mississippi Chancery Practice* § 597 (2d ed. 1950).

those of the present case. The Delaware statutes are almost identical to the Mississippi statutes.

The United States District Court for the Southern District of Mississippi has specifically held the Mississippi non-resident attachment statutes unconstitutional on their face and as applied to facts similar to the present case, for lack of Due Process. *Mississippi Chemical Corporation v. Chemical Construction Corporation*, 444 F. Supp. 925 (S.D. Miss. 1977).

Delaware and Mississippi not only have the same non-resident attachment in Chancery statutes, but these two states, as will be shown later, are the only two jurisdictions among all the states and territories which both have separate equity (chancery) courts and apply their non-resident attachment in chancery statutes to non-resident, domesticated corporations. The result is denial of Equal Protection, because residents, resident corporations and non-residents who do not own property in the state but come under the long-arm statute are entitled to trial in damage suits in a court of law, with proper jury; whereas, non-resident, domesticated corporations, such as Petitioner, with property or debts in the state are taken into Chancery by the unnecessary "device" of attachment and forced to try damage suits without juries.

Such attachments are frequent in the State of Mississippi on Petitioners and others, and there are special and important reasons beyond the money judgment in this case why the Supreme Court should grant certiorari.

I. Certiorari Should Be Granted Because The Statutes Violate Due Process On Their Face And As Applied Here And The Decision Below Is Contrary To Applicable United States Supreme Court And Lower Federal Court Decisions

Section 11-31-1, *et seq.*, Mississippi Code, 1972, the Mississippi non-resident attachment in Chancery statutes, are violative of the Due Process Clause of the Constitution of the United States on their face and as applied to the Petitioners.

Viewing these very statutes on their face, the United States District Court for the Southern District of Mississippi said,

" ... [E]ven viewed as a mechanism for conferring quasi in rem jurisdiction, the Mississippi chancery attachment procedure fails to attain minimal standards of due process. The statutory procedure may be implemented in the sole and unreviewable discretion of the plaintiff's attorney and may be invoked even in cases, such as the case before the Court, where there is neither the need for swift action nor a foreign debtor who truly may not otherwise be subjected to the state court's jurisdiction. [They] ... are unconstitutional because they do not require the plaintiff to obtain any court ordered writ of sequestration or garnishment, the obligation of the attachment defendant to the non-resident principal defendant being bound by the service of process

made at the sole instance and discretion of the plaintiff's attorney; no bond is required of the plaintiff nor is there any requirement that the plaintiff show, by affidavit or otherwise, that he is in any way entitled to the attachment; there is no review either prior to nor after service upon the attachment defendant of the propriety of the attachment by a disinterested, neutral judicial officer, the principal defendant can dissolve the attachment only by posting a satisfactory bond, and no procedure exists whereby the principal defendant can challenge the validity of the attachment on the grounds of procedural irregularity, excessiveness of the attachment, lack of merit of the underlying claim, or any other reason; only by prevailing at trial on the merits can the principal defendant obtain relief from the attached indebtedness; all debts owing to the principal defendant are subject to attachment regardless of where the debts arose, provided only that the attachment defendant be served within the State of Mississippi; and finally, the statutes do not require even a rudimentary *ex parte* hearing." *Mississippi Chemical Corporation v. Chemical Construction Corporation*, 444 F.Supp. 925, 938.

The Mississippi Supreme Court, in its opinion below, said that the facts of the *Mississippi Chemical* case, *supra.* appear to differ from the facts of the case at bar, and then declined to rule the Mississippi attachment in Chancery Statutes violative of due process. (A. 4a)

First, the lower Court was wrong in that a statute which is unconstitutional on its face must fall regardless of differences in facts of cases to which it applies. Second, the facts of the case are, indeed, very, very similar. Chemical Construction, a non-resident corporation, qualified to do business in Mississippi (domesticated), with appointed resident agent for service of process, was sued for damages by Mississippi Chemical by way of non-resident attachment in Chancery of monies of Chemical Construction in the hands of others.

In the instant case, monies and other property of the railroad, a non-resident, domesticated corporation, with appointed resident agent for process, were attached in the hands of W. J. McCraney by a non-resident attachment in Chancery for jurisdiction in a damage suit.

Obviously, the Mississippi Supreme Court did not wish to rule a Mississippi statute unconstitutional, but by avoiding the issue, presumably because *Mississippi Chemical, supra.*, came down after briefing was completed, the Court upheld the statute. There was no doubt as to the clear ruling of the Mississippi Supreme Court in the eyes of the local chancellor, who in the companion case said:

"The Defendants again challenge the constitutionality of the attachment statute. The Court is urged to find that the case of *Mississippi Chemical Corporation v. Chemical Construction Corporation*, 444 F.Supp. 925 (S.D. Miss. 1977), has resolved the

issue in their favor and that this Court is without jurisdiction in that the statutes are unconstitutional.

These issues were clearly presented and definitely resolved against the defendants by the Mississippi Supreme Court in the companion case of *Rheeta Hasty v. Louisville and Nashville Railroad Company*, (Supreme Court Cause No. 50,229). While the Supreme Court declined to consider the *Mississippi Chemical* case [Presumably because it was handed down after the Hasty case was briefed.], it did note that the facts of that case appear to differ from the case before it. I agree." (Brackets added.) (A. 22a)

Obviously, the cases do not differ at all in the material aspects relating to the issue here.

The Mississippi non-resident attachment in Chancery statutes, either standing alone or as applied to Petitioners, do not meet the "fair play and substantial justice" standard of *International Shoe v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945).

In *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569 (1977), non-residents of Delaware were sued in Chancery Court in Delaware by attachment of their stock in a Delaware corporation, under authority of attachment statutes like those in Mississippi. Like the Mississippi statutes, *in personam* jurisdiction and judgment could be obtained because defendant was required to enter general appearance.

In *Shaffer, supra.*, the Supreme Court noted that the only role played by the property attached was to provide the basis for bringing the defendant to court. In the instant case, the only role played by the attached property was to bring the Petitioner before the Chancery Court.

In *Shaffer*, the "minimum contacts" standard was discussed, and while the Petitioners here had substantially more "contacts" through more property and domestication, they were treated, for purposes of jurisdiction, as if they had no contacts except the attached property. The sole basis for jurisdiction was the property. For purposes of attachment it is not even relevant, and it is not necessary to allege the happening of an accident in Mississippi.

As in *Shaffer*, the property attached in this case was not the subject matter of the litigation, was not the underlying cause of the controversy and was totally unrelated to the cause of action.

These cases, together with *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S.Ct. 719 (1975), and others, tell us that the Petitioners have been denied Due Process. There is state action through the sheriff's service of process and the action of the Court, there is deprivation of property, however temporary, and corporations are entitled to the same protection as individuals. *Sniadich v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820 (1967); *Mitchell v. W. T. Grant Company*, 416 U.S. 600, 94 S.Ct. 1895 (1974).

II. Certiorari Should Be Granted Because The Statutes As Applied Deny Equal Protection Of The Laws To Petitioners

Petitioner, Louisville & Nashville Railroad Company, as a non-resident, domesticated corporation, required to have a resident agent for personal service of process, and all non-resident, domesticated corporations are discriminated against and denied Equal Protection of the laws by the combined effect of treating domesticated corporations as non-residents and allowing them to be attached in Chancery as was done here.

Sections 79-1-23 and 79-1-25, reproduced in the Appendix, at pages 20a-21a, state that upon domestication, a non-resident corporation becomes "... to all intents and purposes a corporation of this state..." and is entitled to all rights and privileges and is subject to the duties and obligations of Mississippi corporations. Moreover, service upon the agent or the secretary of state is deemed as effectual as personal service, the venue shall be the same as if served upon the officers of a Mississippi corporation, and the laws of Mississippi relating to suits against corporations shall apply.

Clearly and obviously, the statute does not mean what it says. Mississippi corporations and resident citizens cannot be attached in Chancery in the absence of an affidavit of "absconding".

Mississippi has repeatedly approved such attachments, as indicated by numerous Mississippi at-

tachment cases cited in the Mississippi Supreme Court opinion in the instant case, reproduced at pages 1a-6a.

Of the 50 states, the several territories, the District of Columbia and the Federal judiciary, there are only four jurisdictions, Arkansas, Delaware, Tennessee and Mississippi, which have entirely separate Chancery, or equity Courts. One other jurisdiction, New Jersey, has a Chancery division within its Superior Court. Therefore, including New Jersey, five jurisdictions can be said to have separate Chancery, or equity, Courts. England, which gave us the foundation for our judicial system, long ago abolished separate Chancery.

The impact and significance of the foregoing, as it relates to Equal Protection through the discriminatory attachment of property and denial of jury trials to non-resident, domesticated corporations, is startling when it is realized that only the states of Mississippi and Delaware, among the five which still retain a Chancery, or equity, system, allow attachment of property of domesticated foreign corporations as non-residents. Illustrative of Delaware is the case of *Albright v. United Clay Production Co.*, 62 A. 726 (Del. 1904). *Shaffer* defendants were not domesticated corporations.

The other three, Arkansas (*Sinclair Refining Co. v. Bounds*, 198 Ark. 149, 127 S.W.2d 629 (1939)), New Jersey (*Goldmark v. Magnolia Metal Co.*, 47 A. 720 (N.J. 1900)), and Tennessee (*Brewer v. De Camp Glass Casket Co.*, 201 S.W. 145 (Tenn. 1917)), do not allow

domesticated foreign corporations to be attached as non-residents in Chancery.

Therefore, according to research before the effect of *Shaffer, supra.*, which arose in Delaware, it boils down to only two jurisdictions, Mississippi and Delaware, where a non-resident, domesticated corporation would be denied Equal Protection and be denied a jury trial by way of an attachment, while residents, resident corporations and others are entitled to be tried in a jury court. Where attachment is used for jurisdictional purposes in the other jurisdictions, a proper jury trial would obviously be available, because law and equity are combined in the same court.

It should be of great concern that a domesticated corporation such as the Petitioner can have its property attached and can be denied a jury trial through a device, a gimmick, a legal fiction, while resident citizens and corporations in a similar suit are entitled to a jury trial in a personal injury action and are not subject to attachment.

Some of the rationale for not allowing non-resident attachments of domestic corporations in so many states is expressed by the Louisiana Supreme Court, which said:

"To hold otherwise would lead to practical results highly injurious and detrimental to commercial and industrial operations, as it would permit the seizure and tying up of the property of corporations engaged in vast business enterprises, not only at the instance

of those who might have more or less valid claims against the corporations, but also at the whim and caprice of every suitor who might fancy he had an action against said companies or might institute such suits to annoy, inconvenience, and harass the corporations in order to force unjust compromises and settlements. *Burgin Bros. and McLane v. Barker Baking Co.*, 95 So. 231 (La. 1926)."

Even Mississippi's non-resident motorist, long-arm statute, Section 13-3-63, Mississippi Code, 1972, brings the non-resident to a court of law and not to Chancery.

Cases are myriad which say that a discrimination or different treatment must have sound and reasonable basis and there should be rational basis for a differentiation between the two. Foreign corporations coming into a state are as much entitled to equal protection as persons and citizens of a state. *Quaker City Cab v. Commonwealth of Pennsylvania*, 277 U.S. 389, 48 S.Ct. 553 (1928).

There is no sound, reasonable or rational basis for permitting attachment of property of non-resident, domesticated corporations and requiring them to go to a court of equity, while resident corporations and individuals are not so treated.

III. Certiorari Should Be Granted Because Denial Of A Proper Jury Trial In A Personal Injury Claim For Unliquidated Damages Denies Due Process And Equal Protection To The Petitioners

Petitioners are entitled to a proper jury trial in a claim which is basically a claim at law, and not of equity. To deny them this right is to deny them Due Process and Equal Protection of the laws.

Ordinarily the parties to an action or proceeding in equity do not have the right to a jury trial. *Corpus Juris Secundum* states that the right to a jury trial often turns on whether or not the action is one properly cognizable in equity. The question is determined by the real nature of the action, as shown by the pleadings of all the parties and the nature of the relief sought. 50 C.J.S. *Juries*, §23. The showing of equity jurisdiction must be real and substantial. *Di Giovanni v. Camden Fire Ins. Ass'n.*, 56 S.Ct. 1, 296 U.S. 64, 80 L.Ed. 47.

The Mississippi Supreme Court has stated that a party need not show equity independent of the attachment statute to establish the Chancery Court's jurisdiction. This, then is purely statutory jurisdiction and the determination of whether the defendant is entitled to a jury trial should be made by looking to the nature of the cause, and whether at common law the right of trial was accorded such an action.

The Mississippi non-resident attachment statute is an unconstitutional denial of Equal Protection and Due Process as applied in the instant case because it deprives a party of his right to trial by jury. A number of jurisdictions have held that the power of the legislature to expand the Chancery jurisdiction cannot be so exercised as to deprive a party of the right to a trial by jury guaranteed by the Constitution. *People*

v. One 1941 Chevrolet Coupe, 37 C.2d 283, 231 P.2d 832 (1951); *In Re Garfield's Estate*, 14 N.Y. 2d 251, 251 N.Y.S. 2d 7, 200 N.E. 2d 196 (1964); *Kwas v. Kersey*, 139 W. Va. 497, 81 S.E. 2d 237 (1954). Nor have legislatures been allowed to convert a legal into an equitable cause of action, or confer on Courts of equity jurisdiction of a matter of purely legal nature which otherwise would be properly cognizable only in Courts of law. *People ex rel. Lemon v. Elmore*, 256 N.Y. 489, 177 N.E. 14 (1931).

The guarantee of a jury trial contained in the United States Constitution appears to be a limitation primarily upon the power of the Federal government, and does not prohibit the states from regulating and restricting the right of trial by jury in the state Courts as they may deem proper in a civil action. 50 C.J.S. *Juries*, §10. However, where the denial constitutes a denial of Due Process and Equal Protection of the laws, we contend that these guarantees of the Constitution of the United States come into play as further evidence of the rights of Petitioners.

After the Court had overruled all of the Motions of the Petitioners relative to transfer to Circuit Court, denial of jury trial by way of attachment in Chancery, etc., the Petitioners moved, as a last resort, for a jury trial in Chancery. Jury trial was denied on the ground that it was untimely sought, although Petitioners disagreed with this observation, for the reason that the Motions which were filed complained of a lack of jury trial at all stages.

While the right to a jury in Federal Court is not the same as in State courts, guidance is provided by cases which say that if an action is basically one at law, the issues should be tried to a jury, and the right to a jury cannot be abridged by characterizing the case as equity. *Murphy v. American Motors Sales Corporation*, 410 F.Supp. 1403 (N.D. Ga. 1976).

Noteworthy is the fact that the order overruling our final constitutional arguments was not entered until August 6, 1974, and the Chancellor proceeded with trial that very day. If Petitioners were "stuck" in Chancery, a jury was wanted, however minimal and useless, and motion was made for it. Footnote 1, *supra.*, amply shows that a Chancery jury is next to none at all, and, unbelievably, a chancellor is not even subject to review for either refusing to provide a jury or disregarding a jury's findings. Griffith, *Mississippi Chancery Practice*, Section 597 (2d ed. 1950).

CONCLUSION

Respondent, an Alabama resident, could have sued Petitioners in Alabama, where the railroad has similar operations and property as in Mississippi and where Petitioner Havard resides. Suit could have been brought in a court of law in Gulfport or Biloxi, in Harrison County, Mississippi, where the accident occurred, or in other jurisdictions. Respondent could have filed this non-resident attachment in Chancery in Harrison County. Instead, it was filed in Jackson County Chancery Court, Pascagoula.

Logically, there can be only two reasons why the device of attachment in chancery would be employed

to sue a domesticated non-resident corporation which is amenable to personal service in a court of law:

- (1) To bring the case before a particular chancellor.
- (2) To deny the corporation a jury trial.

Indicative of the whipsaw into which non-resident, domesticated corporations can be thrown by operation of the unconstitutional attachment statute in Mississippi is what has happened to Petitioners in this accident. There were two injuries and one death in the accident from which this case arose. One injury case was tried as Cause Number 8878 in the Circuit Court of Jackson County, Mississippi, before a jury, and Petitioners won a jury verdict for the defendants there on November 15, 1973. Plaintiff's motion for new trial was taken under advisement and held by the Circuit Judge. Respondent, the other injured party, then filed the instant attachment in the Chancery Court, down the hall, on December 12, 1973. After the Chancellor had found for Respondent and entered judgment of \$125,000.00 on February 17, 1976, the Circuit Court, where the jury verdict had been won by Petitioners, entered an order on April 5, 1976, sustaining the pending motion for new trial there. Then, on May 27, 1976, the death case from the same accident was filed against Petitioners by non-resident attachment in Chancery as Cause Number 30,800. The new trial has not yet been held in the Circuit Court, down the hall. The same Chancellor has also overruled all jurisdictional and constitutional motions in the death case (A. 21a-25a), and a trial was held before the Chancellor on September 20, 1978. No decision has been rendered

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APPENDIX

IN THE SUPREME COURT OF MISSISSIPPI

NO. 50,229

LOUISVILLE & NASHVILLE RAILROAD
COMPANY, ET AL.

versus

RHEETA HASTY

BEFORE ROBERTSON, WALTER AND COFER
WALKER, JUSTICE, FOR THE COURT:

This is an appeal from a decision of the Chancery Court of Jackson County, Mississippi, awarding Rheeta Hasty, plaintiff below, \$125,000 for injuries she suffered in a collision between the van in which she was riding and one of appellant's trains.

The appellant railroad company first contends that the chancellor's action in taking jurisdiction of this matter as an attachment in chancery was erroneous and in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, since the appellant foreign corporation was fully domesticated.

The chancellor took jurisdiction of this case pursuant to Mississippi Code Annotated section 11-31-1 (1972), on the ground of the nonresidency of the appellant, a Kentucky corporation. The appellant

argues that this action violated its right to equal protection of the laws because as a domesticated corporation under Mississippi Code Annotated section 79-1-23 (1972), it was "... to all intents and purposes a corporation of this state, and ... [was] entitled to all the rights and privileges and ... subject to all the duties, obligations, restrictions, liabilities, limits and penalties conferred and imposed by the laws of this state upon similar corporations incorporated under the laws of this state."

In *Southern Motor Express Company v. Magee Truck Lines, Inc.*, 181 Miss. 223, 177 So. 653 (1938), the Court held that a foreign corporation domesticated in Mississippi was nevertheless to be considered a resident of its state of incorporation for jurisdictional purposes and was, therefore, subject to the jurisdiction of the chancery court in an attachment suit. The appellant argues that this holding denies it equal protection of the law because under section 79-1-23, it is "... to all intents and purposes a corporation of this state"

This argument is not well taken. In *Southern Motor Express Co.*, the Court stated:

Whatever may be the full import of the domestication statutes, we think it may be safely said that they do not operate to make two separate and distinct corporations. The foreign corporation domesticated here still remains one corporation, and it must, therefore, have its domiciliary residence in one state and not in both. Thus, it seems the

more reasonable to ascribe that residence to the original state which above others has visitorial and supervisory powers over it, as well as the final authority to dissolve it. (181 Miss. at 228, 177 So. at 653).

The visitorial and supervisory powers and final authority to dissolve the corporation vested in the state of incorporation all provide a firm basis for distinguishing domesticated foreign corporations from domestic corporations for jurisdictional purposes. Therefore, we hold that the appellant was not denied equal protection in this case. See *Clark v. Louisville & N.R. Co., et al.*, 158 Miss. 287, 304-05, 130 So. 302, 308 (1930).

Appellant next contends that its constitutional right to a jury trial was violated by the chancery court in taking jurisdiction of this case. However, this issue has previously been decided adversely to appellant and appellant has not advanced any arguments which would persuade us to overrule those cases. See *Illinois Central Railroad Co. v. McDaniel*, 246 Miss. 600, 151 So.2d 805 (1963); *Matthews v. Thompson*, 231 Miss. 258, 95 So.2d 438 (1957); *Talbot & Higgins Lumber Company v. McLeod Lumber Company*, 147 Miss. 186, 113 So. 433 (1927).¹

¹ On the oral argument of this cause, the appellant raises the possibility that the attachment in chancery statute violates procedural due process, citing *Miss. Chemical Corp. v. Chemical Const. Corp.*, 444 F. Supp. 925 (S.D. Miss. 1977). However, since this issue was not briefed and since the facts of *Miss. Chemical* appear to differ from the facts of the case at bar, we decline to consider this issue.

The next contention of the appellant is that the chancellor erred in taking jurisdiction of this cause as "minor's business," because section 159 of the Mississippi Constitution does not confer upon the chancery court jurisdiction to decide facts and award damages in a minor's tort claim for damages.

In response to one of the several pretrial motions to dismiss filed by the appellants, the chancellor observed that he had jurisdiction because the matter involved a minor and the chancery court has jurisdiction over all matters involving minors. It appears that the chancellor was relying upon section 159 of the Mississippi Constitution as authority for his statement. However, such reliance was misplaced. In the recent case of *McLean v. Green*, 352 So.2d 1312 (Miss. 1977), we stated:

While it is true that both complainants were minors, this case neither involved nor required any equitable relief. An analysis of the case law concerning Section 159(d) clearly shows that the jurisdiction of the chancery court over minors is limited to matters involving equitable relief. The action at bar arises from a tort claim, and we have made it clear previously that courts of equity should not assume jurisdiction over claims for personal injury. *Evans v. Progressive Casualty Insurance Company*, 300 So.2d 149 (Miss. 1974); 30 C.J.S. Equity § 28 (1965). One reason for such a rule is that historically tort claims have been tried by jury. In chancery court, with some few statutory exceptions, the right

to a jury is purely within the discretion of the chancellor, and if one is empaneled, its findings are totally advisory. Our constitution, Mississippi Constitution, § 31 (1890), provides that the right to trial by jury shall remain inviolate, but in this case, the chancellor's assumption of jurisdiction of this common law action has deprived the defendant of this right. Although we hold that the chancellor was in error, Mississippi Constitution, § 147 (1890) prevents reversal solely on the ground of want of jurisdiction

. . . .

Despite the mandate of § 147, we look with disfavor upon and consider it an abuse of discretion for a chancellor to assume jurisdiction of a common law action which properly should be tried in a court of law where the right to trial by jury remains inviolate. But absent other error, we cannot reverse. (352 So.2d at 1314).

The appellants' fourth assignment of error is that the chancellor based his decision upon facts which were not reflected in the record and said decision is against the overwhelming weight of the evidence. We have carefully considered the arguments advanced by the appellants in support of this assignment of error, but after a thorough review of the record, we are unable to say that the chancellor's findings were manifestly wrong.

The final assignment of error is that the judgment of \$125,000 is excessive. Appellants base this assign-

ment on the fact that the appellee's medical and hospital bills totaled \$10,701.71 and the fact that her fractures were healing properly. On the other hand, as the appellants concede, she had a ten percent permanent partial disability of the spine and a ten percent disability of the lower left extremity and some disability of the right lower extremity. There also was uncontradicted testimony that the appellee had undergone, and was still in, considerable pain and there was evidence that she underwent a personality change as a result of the accident and psychiatric help in the future was indicated. Under the circumstances, we cannot say that the award was excessive.

For the foregoing reasons, the decree of the chancery court is affirmed.

AFFIRMED.

PATTERSON, C.J., SMITH, P.J., ROBERTSON, P.J.,
SUGG, BROOM, LEE, BOWLING AND COFER, JJ.,
CONCUR.

[Filed: July 12, 1978]

IN THE SUPREME COURT OF MISSISSIPPI

CAUSE NUMBER 50,229

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky Corporation, and STEVE HAVARD, Individually, and as Agent for Louisville and Nashville Railroad Company,
Appellants,

versus

RHEETA HASTY, a Minor, By and Through Her
Mother and Next Friend, Mrs. Faye Hasty,
Appellee.

PETITION FOR REHEARING

NOW COME the Appellants, the Louisville and Nashville Railroad Company, et al., and petition this Court for rehearing in the above styled and numbered cause, and in support thereof, would show unto the Court as follows, to-wit:

In Motions before the Chancery Court and in the Brief of the Appellants, the constitutionality of the attachment procedure under Amendment XIV of the Constitution of the United States was raised.

The bulk of the oral argument presented before the Court by both Appellants and the Appellee dealt with the issue of unconstitutionality of the Mississippi Attachment Statute, Section 11-31-1, Mississippi Code Annotated (1972), and, during the course of that argu-

ment, Justice Robertson requested, and was furnished within minutes after the argument was concluded, a copy of the decision in *Mississippi Chemical Corporation v. Chemical Construction Corporation*, decided November 22, 1977, from the Southern District of Mississippi. The case was discussed thoroughly on oral argument. That case, with abundant authorities cited therein, found the Mississippi Attachment in Chancery Statute unconstitutional on its face and unconstitutional as applied in a similar circumstance, and found such unconstitutionality under Amendment XIV of the Constitution of the United States.

This Court should rule as to whether Section 11-31-1 is unconstitutional on its face, or as applied. This is important, because a companion case growing out of the same accident and founded upon an attachment in Chancery is now pending in the Chancery Court of Jackson County as Cause Number 30,800. We believe this Court should state that Section 11-31-1 is either unconstitutional or is not so that the position of this Court can be known on the matter and so that the parties may file for certiorari to the United States Supreme Court, if they so choose, with the knowledge of where the Mississippi Supreme Court stands on the issue. There is no logical reason to avoid or delay confrontation of this issue. It will be before the Court again and again.

Wherefore, the Petitioners respectfully request the Court to grant rehearing, or, in the alternative, to recall the opinion for an addendum or supplement which squarely confronts the issue of whether or not Section 11-31-1 is unconstitutional on its face or as ap-

plied herein, under Amendment XIV of the Constitution of the United States.

Respectfully submitted,

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
et al.

MEGEHEE, BROWN &
WILLIAMS

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

[Dated: July 17, 1978]

THE COURT SITTING EN BANC:

- 50,229 Louisville & Nashville Railroad Co., et al. v. Rheeta Hasty, etc.; Chancery, Jackson; Petition for Rehearing Denied.
- 50,283 Robert C. Stovall, Jr. v. Richard M. Stovall; Chancery, Chickasaw; Petition for Rehearing Denied. Walker, J., Took No Part.
- 50,323 James Lee Tolbert Jr., et al. v. Monroeby Tolbert Helms; Chancery, Lee; Petition for Rehearing Denied.
- 50,375 Hank Leonard Williams, A Minor, by his Mother Betty Williams v. Southeastern Hatcheries of Miss., Inc., Morton Broiler Farms, Inc., & Maeie H. Myers; Circuit, Scott; Petition for Rehearing Denied.

50,406 O. J. Stanton & Co., Inc., et al. v. Robert L. Dennis and Jerry C. Watkins, d/b/a D & W Constr. Co.; Chancery, Hinds; Petition for Rehearing Denied.

50,418 Alabama Great Southern Railroad Co., v. James E. Jarrell; Circuit, Pearl River; Petition for Rehearing Denied.

50,476 Ronnie Gene Knight v. State; Circuit, Leflore; Petition for Rehearing Denied.

[Filed: July 26, 1978]

IN THE CHANCERY COURT
STATE OF MISSISSIPPI
COUNTY OF JACKSON

RHEETA HASTY, a Minor. By and Through Her
Mother and Next Friend, MRS. FAYE HASTY
Complainant

versus

No. 26,697

LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Kentucky Corporation, STEVE HAVARD, Individually and as Agent for Louisville & Nashville Railroad Company, and W. J. McRANEY, Station Agent for Louisville & Nashville Railroad Company
Defendants

ORDER

There coming on to be heard this day the motion of the Defendants to quash process and dismiss for lack of jurisdiction and the Court having been provided a stipulation of facts relating to the motion, and the Court, being fully advised in the premises, finds that the Court has jurisdiction and, therefore, the motion should be overruled.

It is therefore ordered that the motion of the Defendants to quash process and dismiss this cause for lack of jurisdiction be, and the same hereby is, overruled.

ORDERED This the 24th day of July, 1974.

/s/ KENNETH B. ROBERTSON
CHANCELLOR

ORDER

(Number and Title Omitted)

There coming on to be heard this day the motion of the Defendants, the Louisville and Nashville Railroad Company, Steve Havard and W. J. McRaney, for dismissal on the ground that a trial in Chancery Court without jury by way of attachment in this cause is in violation of Amendments V and XIV and Amendment VII of the United States Constitution and Article 3, Section 31 and Article 3, Section 14 of the Constitution of the State of Mississippi and the Court, being fully advised in the premises, finds that the motion should be, and is hereby overruled.

ORDERED this the 6th day of August, 1974.

/s/ KENNETH B. ROBERTSON
CHANCELLOR

DECREE OF JUDGMENT

(Number and Title Omitted)

This cause having come on for trial before the Court by Writ of Attachment for damages suffered by the Plaintiff, a minor, as a result of an accident between a vehicle in which she was a passenger and a train of the Defendant, Louisville & Nashville Railroad Company, and the Court, having heard said matter without a jury, jury trial having not been timely requested by the Plaintiff or the Defendants, the Court having heard testimony, both oral and by deposition, and having carefully considered same and the law applicable thereto, having written its Opinion in this matter and concluding that the Plaintiff, Rheeta Hasty, a minor, who brought suit by and through her Mother and Next Friend, Mrs. Faye Hasty, should recover judgment against the Defendants, Louisville and Nashville Railroad Company and Steve Havard, jointly, severally, collectively and individually, in the sum of \$125,000.00, together with all costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, Rheeta Hasty, a minor, by and through her Mother and Next Friend, Mrs. Faye Hasty, recover judgment of and from the Defendants,

Louisville and Nashville Railroad Company, a Kentucky Corporation, and Steve Havard, jointly, severally, collectively and individually, in the amount of \$125,000.00 with interest at the rate of eight per cent per annum from the date of this judgment until finally paid, together with all costs which have accrued or shall accrue in this cause.

ORDERED, ADJUDGED AND DECREED, this the 17th day of February, 1976.

/s/ KENNETH B. ROBERTSON
CHANCELLOR

APPROVED AS TO FORM:

/s/ JOHN L. HUNTER
Attorney for Complainant
/s/ RAYMOND L. BROWN
Attorney for Defendants

MOTION FOR RE-HEARING OR NEW TRIAL

(Number and Title Omitted)

NOW COME the Defendants, the LOUISVILLE & NASHVILLE RAILROAD COMPANY and STEVE HAVARD, acting by and through their attorneys, and move this Honorable Court for re-hearing or a new trial, and in support thereof would show unto the Court as follows, to-wit:

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I.

That the Court erred in overruling Motion of Defendants for dismissal for lack of jurisdiction in the Chancery Court.

II.

That the Court erred in overruling Motion for dismissal based on lack of the necessary grounds for an attachment in Chancery.

III.

That the Court erred in overruling Motion for dismissal on the grounds that the Plaintiff has an adequate remedy at law.

IV.

That the Court erred in overruling Motion of Defendants for a Jury trial in Chancery, after the Court had ruled that it would take jurisdiction of the matter in Chancery Court.

V.

That in denying the Defendants their right to be sued in the Circuit Court and in denying Jury trial, the Court was in error and violated the rights of these Defendants under Amendment VII of the Constitution of the United States and Amendment V and Amendment XIV of the Constitution of the United States; that such denial also violated the rights of these Defen-

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dants under Article III, Section 31 of the Constitution of the State of Mississippi and Article III, Section 14 of the Constitution of the State of Mississippi.

VI.

That the Opinion of the Court and the Decree of Judgment based thereon are contrary to the overwhelming weight of the evidence.

VII.

That the amount of the Judgment is excessive and cannot be cured by remittitur, but these Defendants contend that if re-hearing or new trial is not granted, a remittitur should be granted.

VIII.

That in arguments on the Motions made in this cause, the Court and counsel discussed and argued at length the issue of whether the Chancery Court has jurisdiction of this matter, in any event, because it involves a claim of a minor, and the Chancery Court, by statute, has jurisdiction in matters involving minors. It is assumed, therefore, that part, if not all, of the basis for the ruling by the Court taking jurisdiction of this matter is based upon the fact that it is a minor's claim, and, therefore, the Defendants contend that it was error for the Court to take jurisdiction of this cause on said basis.

Respectfully submitted,
LOUISVILLE & NASHVILLE
RAILROAD COMPANY and
STEVE HAVARD
BY: MEGEHEE, BROWN &
WILLIAMS

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

[Dated: February 23, 1976]

ORDER

(Number and Title Omitted)

THERE COMING ON to be heard this day, the Motion for re-hearing, new trial or remittitur in the above styled and numbered cause, and the Court, being fully advised in the premises, finds that the Motion should be overruled.

IT IS, THEREFORE, ORDERED that the Motion for re-hearing, new trial or remittitur be, and it hereby is, overruled.

ORDERED this, the 24th day of February, A.D., 1976.

/s/ KENNETH B. ROBERTSON
CHANCELLOR

CHAPTER 31

MISSISSIPPI CODE, 1972

ATTACHMENT IN CHANCERY AGAINST
NONRESIDENT, ABSENT OR
ABSCONDING DEBTORS

§ 11-31-1 JURISDICTION; DEBTORS

The chancery court shall have jurisdiction of attachment suits based upon demands founded upon any indebtedness, whether the same be legal or equitable, or for the recovery of damages for the breach of any contract, express or implied, or arising ex delicto against any nonresident, absent or absconding debtor, who has lands and tenements within this state, or against any such debtor and persons in this state who have in their hands effects of, or are indebted to, such nonresident, absent or absconding debtor. The court shall give a decree in personam against such nonresident, absent or absconding debtor if summons has been personally served upon him, or if he has entered an appearance.

§ 11-31-3 HOW EFFECTS OR
INDEBTEDNESS BOUND

When a bill shall be filed for an attachment of the effects of a nonresident, absent or absconding debtor in the hands of persons in this state, or of the indebtedness of the defendant in this state to such nonresident, absent or absconding debtor, it shall be sufficient to bind such effects or indebtedness, that the

summons for the defendant resident in this state shall have stated in or endorsed upon it the nature and object of the suit, and that it is to subject the effects in the hands of the resident defendant, and the indebtedness of such defendant to the non-resident, absent or absconding debtor, to the demand of the complainant; or, instead of such statement on the summons, a copy of the bill may be served with the summons, and shall bind the effects or indebtedness from the time of such service.

§ 11-31-5 HOW LAND LEVIED ON

If the land of the nonresident, absent or absconding debtor be the subject of such suit, a writ of attachment shall be issued, and shall be levied by the sheriff or other officer as such writs at law are required to be levied on land, and shall have like effect.

§ 11-31-7 WRITS OF SEQUESTRATION

Writs of sequestration may be issued for personal property in such cases as in others.

§ 11-31-9 PUBLICATION FOR DEFENDANT AND HIS APPEARANCE

The nonresident, absent or absconding debtor shall be made a party to such suit by publication of summons as in other cases, and may appear and plead, demur or answer, to the bill without giving security; but the lien of the creditor upon the property attached shall not be affected thereby unless security be given. If such debtor appear, he may give satisfactory securi-

ty for performing the decree, and thereby discharge the lien, the court, or chancellor in vacation, approving the security and making an order to that effect; but if such debtor fail to appear, or fail to give security, the court shall have power to make any necessary orders, and to require security, to restrain the defendants within this state from paying, conveying away, or secreting the debts by them owing, or the effects in their hands belonging to, the nonresident, absent or absconding defendant, and may order such debts to be paid, or such effects to be delivered to the complainant, on his giving security for the return thereof in such manner as the court may direct.

§ 11-31-11 COMPLAINANT TO GIVE SECURITY AFTER DECREE

If a decree be rendered in such case without the appearance of the absent debtor, the court, before any proceedings to satisfy said decree, shall require the complainant to give security for abiding such further orders as may be made, for restoring of the estate or effects to the absent defendant, on his appearing and answering the bill within two years; and if the complainant shall not give such security, the effects shall remain under the direction of the court, in the hands of a receiver, or otherwise, for such time, and shall then be disposed of as the court may direct.

UNITED STATES CONSTITUTION — AMENDMENT XIV

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof,

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are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction of the equal protection of the laws.

MISSISSIPPI CORPORATION LAWS

§ 79-1-23 Foreign Corporations may be domesticated — Charter to be recorded by Secretary of State

... Any corporation shall, upon compliance with this chapter, become to all intents and purposes a corporation of this state, and shall be entitled to all the rights and privileges and be subject to all the duties, obligations, restrictions, liabilities, limits and penalties conferred and imposed by laws of this state upon similar corporations incorporated under the laws of this state.

§ 79-1-25 Agent of domesticated foreign corporation upon whom process to be served

In any action against any foreign corporation becoming domesticated under the provisions of this chapter, process therein to be executed upon such corporations may be served upon the secretary of state or any agent of such corporation of this state, and such service of process shall be as effectual and shall have the same force and effect as if it had been served upon

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the officers of domestic corporations, as provided by law, and the venue of such action shall be governed by the laws of this state relating to suits against corporations.

IN THE
CHANCERY COURT OF
JACKSON COUNTY, MISSISSIPPI

MRS. FAYET HASTY, INDIVIDUALLY, ROHONDA
CAROL HASTY THOMPSON, INDIVIDUALLY,
RICKY LYLE HASTY, INDIVIDUALLY, and
RHEETA HASTY MARROW, A Minor, by and through
her Next Friend, FRANKLIN MARROW, SR.
Complainants

versus

No. 30,800

LOUISVILLE AND NASHVILLE RAILROAD COM-
PANY, A Kentucky Corporation and STEVE
HAVARD, Individually, and as Agent for
LOUISVILLE AND NASHVILLE RAILROAD COM-
PANY, and W. J. McCRAVEY, Individually, and as
Agent for LOUISVILLE AND NASHVILLE
RAILROAD COMPANY
Defendants

OPINION OF THE COURT

This matter is now before the Court on multiple Motions filed by the Defendants questioning the jurisdiction of this Court.

The Defendants again challenge the constitutionality of the attachment statute. The Court is urged to find that the case of *Mississippi Chemical Corporation v. Chemical Construction Corporation*, 444 F. Supp. 925 (S.D. Miss. 1977), has resolved the issue in their favor and that this Court is without jurisdiction in that the statutes are unconstitutional.

These issues were clearly presented and definitely resolved against the Defendants by the Mississippi Supreme Court in the companion case of *Rheeta Hasty vs. Louisville and Nashville Railroad Company, et al* (Supreme Court Cause No. 50,229). While the Supreme Court declined to consider the Mississippi Chemical case, it did note that the facts of that case appear to differ from the case before it. I agree.

In *Kron v. Vancleave*, 339 So. 2d 559, I attempted to strike down the immoral and unconscionable land tax sale redemption statute as unconstitutional. At page 563, the Supreme Court stated:

"For the reasons stated this case is affirmed without reaching the constitutional question decided by the chancellor. *It is familiar learning that Courts will not decide a constitutional question unless it is necessary to do so in order to decide the case.* (Emphasis supplied.)

The present case certainly fails to meet the stated requirement.

The issues of there being a remedy at law and the request that a jury be impanelled were also resolved adverse to the Defendants in the *Rheeta Hasty* case.

The Defendants raise a new issue that the Defendant Steve Havard is before the Court by service through the "long arm" statute and not by way of attachment. It is argued that Chancery may have jurisdiction over the Defendant L&N through attachment, but cannot have jurisdiction over Havard since he was not brought into Court by attachment and since the "long arm" statute is not available to Chancery Court in a tort action.

This argument is interesting and demonstrates the thoroughness of a very competent attorney to fully represent his clients and leave no stone unturned, however, no law or logic is presented for the Court to so rule.

The issues of lack of jurisdiction on matters involving minors and transfer to Circuit Court may be considered together. These are the two real issues now before the Court.

In the *Rheeta Hasty* Opinion, *McLean v. Green*, 252 So. 2d 1312 (1977) was quoted in part as follows:

"Despite the mandate of § 147, we look with disfavor upon and consider it an abuse of discretion for a chancellor to assume jurisdiction

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of a common law action which properly should be tried in a court of law where the right to trial by jury remains inviolate."

Consideration of the present case has, with the full knowledge of all parties, been held in abeyance pending the outcome of the Rheeta Hasty appeal. It is now set for trial on the 20th of this month.

It could not possibly serve the ends of justice for this case to be transferred, all pleadings reformed and be placed at the end of what is well known to be a crowded and overburdened docket. The office of the new or third Circuit Judge does not take effect until the first of next year. If transferred, it is not probable to assume that this case could be heard this year.

Cognizant of the Rheeta Hasty and McLean cases, I must and do find that the Complainants have waited long enough for their day in Court and the balance of the testimony and evidence presented and I cannot now in good conscience force them to wait longer.

For the reasons stated, all Motions should be overruled.

The attorneys shall present an Order conforming to this Opinion.

RENDERED this the 13th day of September, A.D., 1978.

/s/ KENNETH B. ROBERTSON
KENNETH B. ROBERTSON
CHANCELLOR

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ATTESTED

To be a true copy of original Opinion
filed September 13, 1978

Wilbur G. Dees, Chancery Clerk
Jackson County, Mississippi
/s/ AMELDA I. OWENS, D.C.

[Filed: Sep. 13, 1978]

ORDER

(Number and Title Omitted)

THERE COMING ON to be heard the motions of the Defendants questioning the jurisdiction of this Court, raising issues of constitutionality of the attachment statute requesting transfer to Circuit Court and, in the alternative, a jury trial in Chancery Court, and the Court, being fully advised in the premises, and in accordance with opinion rendered and filed September 13, 1978, in this cause, finds that the motions of the Defendants should be, and the same hereby are, overruled.

ORDERED THIS THE 14th day of September, 1978.

/s/ KENNETH B. ROBERTSON
Chancellor

ATTESTED

To be a true copy of original Order
filed Sept. 14, 1978

Wilbur G. Dees, Chancery Clerk
Jackson County, Mississippi
/s/ ADELIN DAIJETT, D.C.

[Filed: Sep. 14, 1978]